

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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Attachment No. 2

INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS
TITLE 8: CONSTRUCTION SAFETY ORDERS
Chapter 4, Subchapter 4, Article 29, Section 1712(a) and (e)

Hazards Associated with Reinforcing Steel**PROBLEM ADDRESSED BY PROPOSED ACTION**

This proposed rulemaking action is being initiated at the request of the Division of Occupational Safety and Health (Division). The Division submitted a Form 9, Request for New, or Change in Existing, Safety Order, dated October 12, 1998, to the Occupational Safety and Health Standards Board (Board). The Form 9 requested that the "exception" in Section 1712(e) be amended for consistency with the current federal policy as outlined by Federal OSHA in a Standards Interpretation and Compliance (SIC) Letter dated March 9, 1999.

Current Federal OSHA standards require employees working on rebar assemblies above a 6 foot fall distance height to be provided with fall protection. However, per the SIC, the agency recognizes an exception when employees are climbing or moving from work point to work point (point-to-point) and the fall distance height does not exceed 24 feet. Conversely, Section 1712(e) also requires fall protection for employees working on rebar assemblies when the fall distance height exceeds 6 feet, but provides an unrestrictive exception when employees are moving from point-to-point. Given the federal interpretation which limits the fall distance to 24 feet, and the unrestrictive nature of the existing exception in Section 1712 (e), the Division is requesting that the regulation be amended.

The Board received an additional Form 9 from the Division, dated March 8, 1999, requesting amendments to the title of Section 1712 and to the language in subsection 1712(a). The Division believes that current wording of the title and the scope statement in subsection (a) renders the fall protection requirement in subsection (e) unenforceable. The Division provided a copy of a decision granted by the California Occupational Safety and Health Appeals Board dated December 23, 1998. The Administrative Law Judge (ALJ) opined that on the basis of the title and the language in 1712(a), an employee working around rebar is not subject to the fall protection requirements in Section 1712(e), unless exposed to the hazard of impalement. Moreover, the ALJ stated, "Although the Standards Board may not have intended subsection (e) to be so limited, given the scope language of the safety order, subsection (e) does not apply..."

Board staff proposes to amend the title of Section 1712 and the language in subsection 1712(a), along with the "exception" statement in 1712(e) as recommended by the Division.

SPECIFIC PURPOSE AND FACTUAL BASIS OF PROPOSED ACTION

Section 1712. Hazards Associated with the Use of Reinforcing Steel and Other Similar Projections.

The title of Section 1712 serves an important informational purpose and imparts a general sense or application of the regulation to the affected public. A revision is proposed to delete the phrases "the Use of" and "and Other Similar Projections" from the title. The proposed revision is necessary to clarify that Section 1712 requirements are not restricted to just preventing the hazard of impalement from rebar or other similar projections.

Subsection (a) serves as the scope of Section 1712 and describes the specific work activities or situations that are addressed in this regulation. Subsection (a) states that this section applies to all work sites where employees work around or over exposed and projecting rebar or other similar projections. A revision is proposed to change the scope to include all work sites and locations where employees work on reinforcing steel at heights more than 6 feet above the surface below, or on, around or over exposed, projecting, reinforcing steel. The phrase "or other similar projections" is proposed for deletion for clarity purposes. The proposed revision is necessary to clarify the scope of the regulation and to indicate to the public how, and under what conditions, the regulations are to apply.

Subsection (e) prohibits employees from placing or tying rebar in reinforcing steel walls, cages, or piers where the fall distance height exceeds 6 feet without the use of a personal fall protection or other equivalent means of fall protection. An exception to subsection (e) allows employees to move from point-to-point without the benefit of fall protection regardless of the fall distance height or impalement hazard. A revision is proposed that will continue to allow point-to-point travel without fall protection, provided the fall distance height does not exceed 24 feet and there are no impalement hazards. In addition, where the hazard of impalement cannot be eliminated during point-to-point movement, protective covers must be provided as stipulated in subsection (d). The proposed revision is necessary to protect employees from being exposed to falls in excess of 24 feet and being impaled on unprotected rebar regardless of the fall distance height. Additionally, the changes would provide the state with enforceable regulations that are more consistent with the federal fall protection standards interpretation.

DOCUMENTS RELIED UPON

1. Memorandum from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board dated October 12, 1998, regarding the Division's proposed amendment to Section 1712(e), and attached Cal-OSHA Form 9, Request for New, or Change in Existing, Safety Order, with the following attachments: 1) letter dated October 6, 1998, from Mr. Stephen D. Cooper, Executive Director, International Association of Bridge, Structural and Ornamental Iron Workers; 2) letter dated December 19, 1997, from Mr. Roy Gurnham, Director, Office of Construction Standards and Compliance Assistance, U.S. Department of Labor, Occupational Safety and Health Administration, Washington, D.C.

2. Memorandum from the Division of Occupational Safety and Health to the Occupational Safety and Health Standards Board dated March 8, 1999, regarding the Division's proposed amendment to the Title of Section 1712 and 1712(a), and attached Cal-OSHA Form 9, Request for New, or Change in Existing, Safety Order.
3. DECISION - Docket 97-R6D2-3390, In the Matter of the Appeal of: Martinez Steel, dated December 23, 1998, Occupational Safety and Health Appeals Board.
4. Federal OSHA Standards Interpretation and Compliance Letter dated March 9, 1999 - Reinforcing steel (rebar) assemblies: questions regarding fall protection and training.

These documents are available for review during normal business hours at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

IDENTIFIED ALTERNATIVES THAT WOULD LESSEN ADVERSE IMPACT ON SMALL BUSINESS

No adverse impact on small business is anticipated from the implementation of the proposed amendments. The proposed amendments are only technical, clarifying editorial revisions to regulations contained in the Construction Safety Orders. Board staff anticipates no new or added effect upon an employer's operations that would result in an employer incurring additional costs. Therefore, no alternatives which would lessen the impact on small businesses have been identified.

SPECIFIC TECHNOLOGY OR EQUIPMENT

This proposal will not mandate the use of specific technologies or equipment.

COST ESTIMATES OF PROPOSED ACTION

Costs or Savings to State Agencies

No costs or savings to state agencies will result as a consequence of the proposed action (see "Identified Alternatives that Would Lessen Adverse Impact on Small Businesses"). In addition, Board staff has not identified any state agencies that have a direct or indirect relationship to these proposed changes. Therefore, Board staff does not anticipate the proposal will have any direct impact, positive or negative, upon state agencies.

Impact on Housing Costs

The proposal will not significantly affect housing costs.

Impact on Businesses

This proposal will not result in a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendments consist of clarifying changes to the title, scope, and exception for work being performed on rebar assemblies. Therefore, Board staff does not believe that the proposal will have a new or added effect upon the employer with respect to the construction of rebar assemblies.

Cost Impact on Private Persons or Entities

The proposal will not require private persons or entities to incur additional costs in complying with the proposal.

Cost or Savings in Federal Funding to the State

The proposal will not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local agencies or school districts are required to be reimbursed. See explanation under "Determination of Mandate."

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed regulation does not impose a local mandate. Reimbursement by the state is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, this regulation does not constitute a "new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

The California Supreme Court has established that a "program" within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

The proposed regulation does not require local agencies to carry out the governmental function of providing services to the public. Rather, the regulation requires local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, the proposed regulation does not in any way require local agencies to administer the California Occupational

Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

This proposed regulation does not impose unique requirements on local governments. All employers - state, local and private - will be required to comply with the prescribed standard.

PLAIN ENGLISH STATEMENT

It has been determined that the proposal may affect small business. The express terms of the proposal written in plain English have been prepared by the Board pursuant to Government Code Sections 11342(e) and 11346.2(a)(1) and are available from the agency contact person named in this notice. The informative digest for this proposal constitutes a plain English overview.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

ALTERNATIVES THAT WOULD AFFECT PRIVATE PERSONS

No alternatives considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.